

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

**NOTICE OF MODIFICATION TO TEXT OF
PROPOSED RULEMAKING**

**Subject Matter of Regulations:
Workers' Compensation – Medical Treatment Utilization Schedule**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 9792.20 through 9792.26**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, proposes to modify the text of the following proposed regulations contained in Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations, sections 9792.20 through 9792.26, relating to the medical treatment utilization schedule (MTUS).

Amended Section 9792.20	Medical Treatment Utilization Schedule—Definitions
Amended Section 9792.21	Medical Treatment Utilization Schedule
Adopted Section 9792.22	General Approaches
Adopted Section 9792.23	Clinical Topics
Adopted Section 9792.23.1	Neck and Upper Back Complaints
Adopted Section 9792.23.2	Shoulder Complaints
Adopted Section 9792.23.3	Elbow Complaints
Adopted Section 9792.23.4	Forearm, Wrist, and Hand Complaints
Adopted Section 9792.23.5	Low Back Complaints
Adopted Section 9792.23.6	Knee Complaints
Adopted Section 9792.23.7	Ankle and Foot Complaints
Amended Section 9792.24.1	Acupuncture Medical Treatment Guidelines
Adopted Section 9792.24.2	Chronic Pain Medical Treatment Guidelines
Adopted Section 9792.24.3	Postsurgical Treatment Guidelines

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Thursday, December 18, 2008**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact

person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

If any member of the public is interested in obtaining a hard copy of the Chronic Pain Medical Treatment Guidelines (Part 1-Introduction and Part 2-Pain Interventions and Treatments), please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 and arrangements will be made to make a copy available to the requesting party. Otherwise all the rulemaking documents, including the proposed Chronic Pain Medical Treatment Guidelines will be posted in the DWC website at <http://www.dwc.ca.gov>.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Amended Section 9792.20	Medical Treatment Utilization Schedule—Definitions
Amended Section 9792.21	Medical Treatment Utilization Schedule
Adopted Section 9792.22	General Approaches
Adopted Section 9792.23	Clinical Topics
Adopted Section 9792.23.1	Neck and Upper Back Complaints
Adopted Section 9792.23.2	Shoulder Complaints
Adopted Section 9792.23.3	Elbow Complaints
Adopted Section 9792.23.4	Forearm, Wrist, and Hand Complaints
Adopted Section 9792.23.5	Low Back Complaints
Adopted Section 9792.23.6	Knee Complaints
Adopted Section 9792.23.7	Ankle and Foot Complaints
Amended Section 9792.24.1	Acupuncture Medical Treatment Guidelines
Adopted Section 9792.24.2	Chronic Pain Medical Treatment Guidelines
Adopted Section 9792.24.3	Postsurgical Treatment Guidelines

DOCUMENTS SUPPORTING THE RULEMAKING FILE

- Comments from various interested parties concerning the regulations have been added to the rulemaking file.
- ACOEM Practice Guidelines, APG Insights, Fall 2006, *ACOEM's Revised Evidence-Based Occupational Medicine Practice Guidelines and Methodology*, page 1
- ACOEM. *Occupational Medicine Practice Guidelines*, 2nd Edition., *Chronic Pain* (Revised 2008), American College of Occupational and Environmental Medicine, 25 Northwest Point Blvd., Suite 700, Elk Grove Village, Illinois, 60007-1030 (www.acoem.org), page 29.

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- Crossing the Quality Chasm: A New Health System for the 21st Century/Committee on Quality of Health Care in America, Institute of Medicine, National Academy Press, Washington, D.C., Fifth Printing, June 2004, page 151.
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- Work Loss Data Institute, Official Disability Guidelines Licensed by Top WC Payors.
- Work Loss Data Institute, Official Disability Guideline's Jurisdictional Adoptions of Treatment Guidelines in North America with Contact Information, March 1, 2008
- Work Loss Data Institute, Official Disability Guidelines, Treatment in Workers' Comp-Chapter on Pain (Chronic), version dated October 23, 2008
- Work Loss Data Institute, Official Disability Guidelines, Treatment in Workers' Comp-Excerpt from the Chapter Procedures Summaries (ODG Physical Medicine Guidelines), version dated October 23, 2008:
 - Ankle & Foot (Acute & Chronic)
 - Burns
 - Carpal Tunnel Syndrome
 - Elbow (Acute & Chronic)
 - Forearm, Wrist, & Hand (Acute & Chronic)(Not including "Carpal Tunnel Syndrome.)
 - Head (trauma, headaches, etc., not including stress & mental disorders)
 - Hip & Pelvis (Acute & Chronic)
 - Knee & Leg (Acute & Chronic)
 - Low Back – Lumbar & Thoracic (Acute & Chronic)
 - Neck and Upper Back (Acute & Chronic)
 - Shoulder (Acute & Chronic)
- Work Loss Data Institute, Official Disability Guidelines, Treatment in Workers' Comp, Methodology Description using the AGREE Instrument (Appendix B)
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FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the regulatory text, as proposed in June 2008, are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the regulatory text, as proposed in June 2008, are indicated by underlining, thus: underlined language.

Proposed Text Noticed for This 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in this comment period, are indicated by double strike-through, thus: ~~deleted language~~.

Additions to the regulatory text, as proposed in this comment period, are indicated by a double underline, thus: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to § 9792.20. Medical Treatment Utilization Schedule—Definitions

Subdivision 9792.20(c) is corrected for clerical error to delete the word “tissue” from the definition of “chronic pain.” The definition is corrected to reflect the definition as quoted from the textbook of *Bonica’s Management of Pain*, wherein the term is defined, in pertinent part, as “pain that extends beyond the expected period of healing.” (Turk, D. and Okifuji A. *Pain Terms and Taxonomies* in Bonica’s Management of Pain, 3rd edition. Philadelphia, PA, Lippincott Williams and Wilkins:17.)

Subdivision 9792.20(f) is modified to delete the word “quantifiable” and reinstate the original phrase “clinically significant” as contained in the original definition of the term “functional improvement.” Many comments have been submitted stating that functional improvement may not actually be quantifiable; the term “clinically significant” may be more appropriate and easier to be communicated by the treating physician in the reports. Therefore, the definition of functional improvement will be reverted to the original definition as contained in the proposal of June 2008. The term “functional improvement” is modified to mean “either a clinically significant improvement in activities of daily living or a reduction in work restrictions as measured during the history and physical exam, performed and documented as part of the evaluation and management visit billed under the Official Medical Fee Schedule (OMFS) pursuant to sections 9789.10-9789.111; and a reduction in the dependency on continued medical treatment.”

Modifications to § 9792.23. Clinical Topics

Subdivision 9792.23(b) is modified to substitute the word “treatment” with the phrase “conditions or injuries.” This amendment makes the text of section 9792.23(b) consistent with the text of the statute (Lab. Code, §4604.5(e)), and with the text of other sections of the regulations (§9792.21(c), §9792.25(b), and §9792.25(c)(1)). Thus, subdivision 9792.23(b), as modified for this comment period, provides: “For all conditions or injuries not addressed in the MTUS, the authorized treatment and diagnostic services in the initial management and subsequent treatment for presenting complaints shall be in accordance with other scientifically and evidence-based medical treatment guidelines that are nationally recognized by the medical community pursuant to section 9792.25(b).”

Subdivision 9792.23(b)(1) is modified to substitute the phrase “surgical options for the complaint” with the phrase “definitive treatment,” to substitute the word “in” with the word “for,” and to substitute the phrase “with chronic pain” with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” The subdivision is modified to clarify the applicability of the Chronic Pain Medical Treatment Guidelines when other guidelines are being used pursuant to section 9792.23(b). The use of the definition of the term “chronic pain” (e.g., pain that persists beyond the anticipated time of healing) is clinically useful to the treating physician to redirect the treatment back from other guidelines pursuant to section 9792.23(b) into the MTUS and the Chronic Pain Medical Treatment Guidelines when the case becomes chronic. Thus subdivision 9792.23(b)(1) as modified provides, “In providing treatment using other guidelines pursuant to subdivision (b) above and in the absence of any definitive treatment for

the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Subdivision 9792.23(b)(2) is modified to add a phrase at the end of sentence the sentence which states, “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b).” This subdivision is modified to clarify that following surgery, other applicable treatments in addition to postsurgical physical medicine provided under the postsurgical treatment guidelines, will be addressed under the MTUS (e.g., postoperative pain medications). Thus subdivision 9792.23(b)(2) as modified provides, “In providing treatment using other guidelines pursuant to subdivision (b) above and if surgery is performed, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b).”

Modifications to § 9792.23.1. Neck and Upper Back Complaints

Subdivision 9792.23.1(b) is modified to add the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” at the end of the sentence. The reorganization of the MTUS, by separating the chapters into different sections and adopting them separately, affected the Acupuncture Medical Treatment Guidelines. Comments were submitted by the regulated public that language needed to be inserted in the clinical topics sections of the regulations to clarify that the Acupuncture Medical Treatment Guidelines apply and supersede the text in the ACOEM chapters where acupuncture is addressed. Accordingly, the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” is inserted in subdivision (b) in § 9792.23.1 Neck and Upper Back Complaints for clarification purposes. Thus, subdivision 9792.23.1(b) as modified provides, “In the course of treatment for neck and upper back complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 shall apply and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture.”

Subdivision 9792.23.1(d) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that following surgery, other applicable treatments in addition to postsurgical physical medicine provided under the postsurgical treatment guidelines, will be addressed under the MTUS (e.g., postoperative pain medications). The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This sentence is modified to clarify that in situations where surgery is considered, the surgery may not be performed due to comorbidities/contraindications or by patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.1(d) as modified provides, “If surgery is performed in the course of treatment for neck and upper back complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.23.2. Shoulder Complaints

Subdivision 9792.23.2(c) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that following surgery,

other applicable treatments in addition to postsurgical physical medicine provided under the postsurgical treatment guidelines, will be addressed under the MTUS (e.g., postoperative pain medications). The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This subdivision is modified to clarify that in situations where surgery is considered, the surgery may not be performed due to comorbidities/contraindications or by patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.2(c) as modified provides, “If surgery is performed in the course of treatment for shoulder complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.23.3. Elbow Disorders

The title of § 9792.23.3 is corrected for clerical error to substitute the word “Complaints” with the word “Disorders.” This modification reflects the correct name of the revised ACOEM Chapter 12, which is entitled Elbow Disorders. Thus, the modified title of the section now reads: “§ 9792.23.3. Elbow Disorders.”

Subdivision 9792.23.3(b) is modified to add the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” at the end of the sentence. The reorganization of the MTUS, by separating the chapters into different sections and adopting them separately, affected the Acupuncture Medical Treatment Guidelines. Comments were submitted by the regulated public that language needed to be inserted in the clinical topics sections of the regulations to clarify that the Acupuncture Medical Treatment Guidelines apply and supersede the text in the ACOEM chapters where acupuncture is addressed. Accordingly, the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” is inserted in subdivision (b) in § 9792.23.3 Elbow Disorders for clarification purposes. Thus, subdivision 9792.23.3(b) as modified provides, “In the course of treatment for elbow complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 shall apply and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture.”

Subdivision 9792.23.3(d) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that following surgery, other applicable treatments in addition to postsurgical physical medicine provided under the postsurgical treatment guidelines, will be addressed under the MTUS (e.g., postoperative pain medications). The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This subdivision is modified to clarify that in situations where surgery is considered, the surgery may not be performed due to comorbidities/contraindications or by patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.3(d) as modified provides, “If surgery is performed in the course of treatment for elbow complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain

that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.23.4. Forearm, Wrist, and Hand Complaints

Subdivision 9792.23.4(b) is modified to add the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” at the end of the sentence. The reorganization of the MTUS, by separating the chapters into different sections and adopting them separately, affected the Acupuncture Medical Treatment Guidelines. Comments were submitted by the regulated public that language needed to be inserted in the clinical topics sections of the regulations to clarify that the Acupuncture Medical Treatment Guidelines apply and supersede the text in the ACOEM chapters where acupuncture is addressed. Accordingly, the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” is inserted in subdivision (b) in § 9792.23.4 Forearm, Wrist, and Hand Complaints for clarification purposes. Thus, subdivision 9792.23.4(b) as modified provides, “In the course of treatment for forearm, wrist, and hand complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 shall apply and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture.”

Subdivision 9792.23.4(d) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that following surgery, other applicable treatments in addition to postsurgical physical medicine provided under the postsurgical treatment guidelines, will be addressed under the MTUS (e.g., postoperative pain medications). The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This subdivision is modified to clarify that in situations where surgery is considered, the surgery may not be performed due to comorbidities/contraindications or by patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.4(d) as modified provides, “If surgery is performed in the course of treatment for forearm, wrist, and hand complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.23.5. Low Back Complaints

Subdivision 9792.23.5(b) is modified to add the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” at the end of the sentence. The reorganization of the MTUS, by separating the chapters into different sections and adopting them separately, affected the Acupuncture Medical Treatment Guidelines. Comments were submitted by the regulated public that language needed to be inserted in the clinical topics sections of the regulations to clarify that the Acupuncture Medical Treatment Guidelines apply and supersede the text in the ACOEM chapters where acupuncture is addressed. Accordingly, the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” is inserted in subdivision (b) in § 9792.23.5 Low Back Complaints for clarification purposes. Thus, subdivision 9792.23.5(b) as modified provides, “In the course of treatment for low back complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 shall apply and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture.”

Subdivision 9792.23.5(d) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that postsurgical physical medicine treatment is provided under the postsurgical treatment guidelines. However, other treatments (e.g., postoperative pain medications) will be addressed under the MTUS. The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This subdivision is modified to clarify that there will be situations that although surgery may be considered, the surgery may not be performed due to comorbidities/contraindications or by patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.5(d) as modified provides, “If surgery is performed in the course of treatment for low back complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.23.6. Knee Complaints

Subdivision 9792.23.6(b) is modified to add the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” at the end of the sentence. When reorganizing the MTUS by separating the chapters into different sections and adopting them separately, this reorganization affected the Acupuncture Medical Treatment Guidelines. Comments were submitted by the regulated public that language needed to be inserted in the clinical topics sections of the regulations to clarify that the Acupuncture Medical Treatment Guidelines apply and supersede the text in the ACOEM chapters where acupuncture is addressed. Accordingly, the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” is inserted in subdivision (b) in § 9792.23.6 Knee Complaints for clarification purposes. Thus, subdivision 9792.23.6(b) as modified provides, “In the course of treatment for knee complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 shall apply and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture.”

Subdivision 9792.23.6(d) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that postsurgical physical medicine treatment is provided under the postsurgical treatment guidelines. However, other treatments (e.g., postoperative pain medications) will be addressed under the MTUS. The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This subdivision is modified to clarify that there will be situations that although surgery may be considered, the surgery may not be performed due to comorbidities/contraindications or by the patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.6(d) as modified provides, “If surgery is performed in the course of treatment for knee complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.23.7. Ankle and Foot Complaints

Subdivision 9792.23.7(b) is modified to add the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” at the end of the sentence. When reorganizing the MTUS by separating the chapters into different sections and adopting them separately, this reorganization affected the Acupuncture Medical Treatment Guidelines. Comments were submitted by the regulated public that language needed to be inserted in the clinical topics sections of the regulations to clarify that the Acupuncture Medical Treatment Guidelines apply and supersede the text in the ACOEM chapters where acupuncture is addressed. Accordingly, the phrase “and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture” is inserted in subdivision (b) in § 9792.23.7 Ankle and Foot Complaints for clarification purposes. Thus, subdivision 9792.23.7(b) as modified provides, “In the course of treatment for ankle and foot complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 shall apply and supersede the text in the ACOEM chapter referenced in subdivision (a) above relating to acupuncture.”

Subdivision 9792.23.7(d) is modified to add the phrase “together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b)” at the end of the first sentence of the subdivision. This sentence is modified to clarify that postsurgical physical medicine treatment is provided under the postsurgical treatment guidelines. However, other treatments (e.g., postoperative pain medications) will be addressed under the MTUS. The second sentence of this subdivision is amended to delete the phrase “surgical options for the complaint and” and to substitute it with the phrase “definitive treatment for,” and to delete the phrase “has chronic pain,” and to substitute it with the phrase “who continues to have pain that persists beyond the anticipated time of healing.” This subdivision is modified to clarify that there will be situations that although surgery may be considered, the surgery may not be performed due to comorbidities/contraindications or by the patient’s choice. In those situations, the Chronic Pain Medical Treatment Guidelines apply. Thus, subdivision 9792.23.7(d) as modified provides, “If surgery is performed in the course of treatment for ankle and foot complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine shall apply together with any other applicable treatment guidelines found in the MTUS or in accordance with section 9792.23(b). In the absence of any definitive treatment for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply.”

Modifications to § 9792.24.1. Acupuncture Medical Treatment Guidelines

Subdivision 9792.24.1(b)(1) is modified on a non-substantive basis to substitute the word “indicated” with the word “referenced” for clarity purposes. The word “indications” carries a medical usage which is not the intention in the context of the sentence. The meaning of the sentence is to reference one section of the MTUS with another. That is, to reference the acupuncture guidelines as applied to the specific clinical topic guidelines.

Subdivision 9792.24.1(b)(1) is further modified on a non-substantive basis to delete the parenthetical information “(DWC 2008)” for clarity purposes. This modification will allow the date of effectiveness of the MTUS regulations to be the date of the chronic pain medical treatment guidelines.

Modifications to § 9792.24.2. Chronic Pain Medical Treatment Guidelines

The title of the section is modified to delete the parenthetical information “(DWC 2008)” for clarity purposes. This modification will allow the date of effectiveness of the MTUS regulations to be the date of the chronic pain medical treatment guidelines.

Subdivision 9792.24.2(a) is modified to delete the parenthetical information “(DWC 2008)” for clarity purposes. This modification will allow the date of effectiveness of the MTUS regulations to be the date of the chronic pain medical treatment guidelines.

Subdivision 9792.24.2(a) is further modified to delete the phrase “and citations listed in the guidelines” in the last sentence of the subdivision. The phrase is deleted because the citations/references are now incorporated by reference in subdivision 9792.24.2(e); and that subdivision informs the public where the citations/references may be obtained. Thus, the last sentence of subdivision 9792.24.2(a) as modified states, “A copy of the chronic pain medical treatment guidelines may be obtained from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>.”

Note: The Division of Workers’ Compensation (DWC) proposes to adapt the most recent version of the Chronic Pain Medical Treatment Guidelines, Part 1: Introduction and Part 2- Interventions and Treatments. The amendments to the guidelines will be noticed in a document entitled **Appendix A1—Chronic Pain Medical Treatment Guidelines**. Appendix A1 serves as the notice of modification of the text of the DWC Chronic Pain Medical Treatment Guidelines as adapted from the Work Loss Data Institute’s Official Disability Guidelines (ODG) Treatment in Workers’ Comp – Chapter on Pain. **The new version adapted is dated October 23, 2008**, with the permission of the Work Loss Data Institute. The Work Loss Data Institute has provided its ODG chapter on pain version to the Division of Workers’ Compensation (DWC) at no cost. As previously noticed, the Chronic Pain Medical Treatment Guidelines, Section 9792.24.2, et al., consists of two parts. Part 1: Introduction, and Part 2: Pain Interventions and Treatments. The chronic pain medical treatment guidelines replace the ACOEM’s Practice Guidelines’ Chapter 6—*Pain, Suffering, and the Restoration of Function* (Chapter 6) relating to chronic pain.

DWC decided to explain the modifications to the Chronic Pain Medical Treatment Guidelines in a separate document (i.e., Appendix A) because this document will be used in the future as an unincorporated reference document supporting the Chronic Pain Medical Treatment Guidelines.

Subdivision 9792.24.2(e) is added to section §9792.24.2 to reflect that Appendix D—Chronic Pain Medical Treatment Guidelines-Division of Workers’ Compensation and Official Disability Guidelines References—is incorporated by reference into the MTUS as supplemental part of the Chronic Pain Medical Treatment Guidelines. This subdivision further provides that a copy of Appendix D may be obtained from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>. These references are incorporated into the MTUS as supplemental part of the Chronic Pain Medical Treatment Guidelines. Appendix D is incorporated into the regulations pursuant to requests by the regulated public that the references should be available to the public as part of the regulations. Because the references are voluminous and it would cumbersome and impractical to publish them in the regulations, DWC will incorporate them by reference into the regulations, and make them available to the public as set forth above. This allows the regulated public to have access to the Division of Workers’ Compensation and Official Disability Guidelines’ chronic pain medical treatment guidelines’ references if interested.

Modifications to §9792.24.3. Postsurgical Treatment Guidelines

The title of the section is modified to delete the phrase “DWC 2008.” The phrase is being deleted to avoid confusion as to the date of applicability of the guidelines. The date when the regulations become effective is the date when the guidelines become applicable.

Subdivision 9792.24.3(a)1. is modified for clerical purposes to delete the period after number 1 and to place the number in parenthesis, thus (1). The subdivision as corrected now reads, subdivision 9792.24.3(a)(1).

Subdivision 9792.24.3(a)2. is modified for clerical purposes to delete the period after number 2 and to place the number in parenthesis, thus (2). The subdivision as corrected now reads, subdivision 9792.24.3(a)(2).

Subdivision 9792.24.3(a)3. is modified for clerical purposes to delete the period after number 3 and to place the number in parenthesis, thus (3). The subdivision as corrected now reads, subdivision 9792.24.3(a)(3).

Subdivision 9792.24.3(a)4. is modified for clerical purposes to delete the period after number 4 and to place the number in parenthesis, thus (4). The subdivision as corrected now reads, subdivision 9792.24.3(a)(4).

Subdivision 9792.24.3(a)5. is modified for clerical purposes to delete the period after number 5 and to place the number in parenthesis, thus (5). The subdivision as corrected now reads, subdivision 9792.24.3(a)(5).

Subdivision 9792.24.3(b)1. is modified for clerical purposes to delete the period after number 1 and to place the number in parenthesis, thus (1). The subdivision as corrected now reads, subdivision 9792.24.3(b)(1).

Subdivision 9792.24.3(c)1. is modified for clerical purposes to delete the period after number 1 and to place the number in parenthesis, thus (1). The subdivision as corrected now reads, subdivision 9792.24.3(c)(1).

Subdivision 9792.24.3(c)1. is further corrected for clarification purposes to delete the comma after the phrase “a nurse practitioner.” The comma was removed pursuant to a public comment that it was not clear whether the nurse practitioner would need to be working with the surgeon who performed the operation and whether this provision would expand the scope of practice of the nurse practitioner. The intention of the subdivision is to have the nurse work with the surgeon as part of the surgical team. The comma is removed to avoid misinterpretation of this provision. This language is also consistent with the language set forth in subdivision 9792.24.3(c)(5)(A).

Subdivision 9792.24.3(c)2. is modified for clerical purposes to delete the period after number 2 and to place the number in parenthesis, thus (2). The subdivision as corrected now reads, subdivision 9792.24.3(c)(2).

Subdivision 9792.24.3(c)3. is modified for clerical purposes to delete the period after number 3 and to place the number in parenthesis, thus (3). The subdivision as corrected now reads, subdivision 9792.24.3(c)(3).

Subdivision 9792.24.3(c)4. is modified for clerical purposes to delete the period after number 4 and to place the number in parenthesis, thus (4). The subdivision as corrected now reads, subdivision 9792.24.3(c)(4).

Subdivision 9792.24.3(d)(1) is modified to delete the last sentence of the subdivision which states, “A copy of citations listed in the postsurgical treatment guidelines may be obtained from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>.” The sentence is deleted because that information is moved to new subdivision 9792.24.3(d)(3) which incorporates by reference

into the MTUS Appendix E containing the Postsurgical Treatment Guidelines references, and informs the public where these references may be obtained.

Modifications to Postsurgical Treatment Guidelines as adapted from the ODG's Postsurgical Treatment Guidelines Chapters, version dated October 23, 2008 are reflected below.

The **Ankle and Foot** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Ankle & Foot

Exercise program goals should include strength, flexibility, endurance, coordination, and education. Patients can be advised to do early passive range-of-motion exercises at home by a physical therapist. (Colorado, 2001) (Aldridge, 2004) This RCT supports early motion (progressing to full weightbearing at 8 weeks from treatment) as an acceptable form of rehabilitation in surgically treated patients with Achilles tendon ruptures. (Twaddle, 2007)

The **Burns** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Burns

Recommended. Occupational therapy and physical therapy for the patient with burns may include respiratory management, edema management, splinting and positioning, physical function (mobility, function, exercise), scar management, and psychosocial elements. (Simons, 2003) As with any treatment, if there is no improvement after 2-3 weeks the protocol may be modified or re-evaluated.

The **Carpal Tunnel Syndrome** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Carpal Tunnel Syndrome

Recommended as indicated below. There is limited evidence demonstrating the effectiveness of PT or OT for CTS. The evidence may justify 3 to 5 visits over 4 weeks after surgery, up to the maximums shown below. Benefits need to be documented after the first week, and prolonged therapy visits are not supported. Carpal tunnel syndrome should not result in extended time off work while undergoing multiple physical therapy visits, when other options (including surgery for carefully selected patients) could result in faster return to work. Furthermore, Carpal tunnel release surgery is a relatively simple operation that also should not require extended multiple physical therapy office visits for recovery. Of course, these statements do not apply to cases of failed surgery and/or misdiagnosis (e.g., CRPS I instead of CTS). (Feuerstein, 1999) (O'Conner-Cochrane, 2003) (Verhagen-Cochrane, 2004) (APTA, 2006) (Bilic, 2006) Post surgery, a home physical therapy program is superior to extended splinting. (Cook, 1995) Continued visits should be contingent on documentation of objective improvement, i.e., VAS improvement greater than four, and long-term resolution of symptoms. Therapy should include education in a home program, work discussion and suggestions for modifications, lifestyle changes, and setting realistic expectations. Passive modalities, such as heat, iontophoresis, phonophoresis, ultrasound and electrical stimulation, should be minimized in favor of active treatments.

The **Forearm, Wrist, & Hand** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below. Moreover, the sentence "Hand function

significantly improved in patients with rheumatoid arthritis after completion of a course of occupational therapy ($p < 0.05$),” and supporting study “(Rapoliene, 2006)” is deleted as the subject of the reference and the study do not relate to surgery.

Forearm, Wrist, & Hand

(Not including Carpal Tunnel Syndrome –see separate post surgical guideline.)

Used after surgery and amputation. During immobilization, there was weak evidence of improved hand function in the short term, but not in the longer term, for early occupational therapy, and of a lack of differences in outcome between supervised and unsupervised exercises. Post-immobilization, there was weak evidence of a lack of clinically significant differences in outcome in patients receiving formal rehabilitation therapy, passive mobilization or whirlpool immersion compared with no intervention. There was weak evidence of a short-term benefit of continuous passive motion (post external fixation), intermittent pneumatic compression and ultrasound. There was weak evidence of better short-term hand function in patients given physical therapy than in those given instructions for home exercises by a surgeon. (Handoll-Cochrane, 2002) (Handoll-Cochrane, 2006) ~~Hand function significantly improved in patients with rheumatoid arthritis after completion of a course of occupational therapy ($p < 0.05$). (Rapoliene, 2006)~~

Sprains and strains of elbow and forearm (ICD9 841):

Post-surgical treatment/ligament repair: 24 visits over 16 weeks

*Postsurgical physical medicine treatment period: 6 months

The **Hip, Pelvis and Thigh (femur)** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Hip, Pelvis and Thigh (femur)

A physical therapy program that starts immediately following hip ~~injury or~~ surgery allows for greater improvement in muscle strength, walking speed and functional score. (Jan, 2004) (Jain, 2002) (Penrod, 2004) (Tsauo, 2005) (Brigham, 2003) (White, 2005) (National, 2003) A weight-bearing exercise program can improve balance and functional ability to a greater extent than a non-weight-bearing program. (Expert, 2004) (Binder, 2004) (Bolgla, 2005) (Handoll, 2004) (Kuisma, 2002) (Lauridsen, 2002) (Mangione, 2005) (Sherrington, 2004) Patients with hip fracture should be offered a coordinated multidisciplinary rehabilitation program with the specific aim of regaining sufficient function to return to their pre-fracture living arrangements. (Cameron, 2005) Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008)

Osteoarthritis and allied disorders (ICD9 715):

Post-surgical treatment: 18 visits over 12 weeks

*Postsurgical physical medicine treatment period: 6 months

The **Knee** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Knee

Controversy exists about the effectiveness of physical therapy after arthroscopic partial meniscectomy. (Goodwin, 2003) Functional exercises after hospital discharge for total knee arthroplasty result in a small to moderate short-term, but not long-term, benefit. In the short term physical therapy interventions with exercises based on functional activities may be more effective after total knee arthroplasty than traditional exercise programs, which concentrate on isometric muscle exercises and exercises to increase range of motion in the joint. (Minns Lowe, 2007)—Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008)

The **Low Back** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Low Back

As compared with no therapy, physical therapy (up to 20 sessions over 12 weeks) following disc herniation surgery was effective. Because of the limited benefits of physical therapy relative to "sham" therapy (massage), it is open to question whether this treatment acts primarily physiologically, but psychological factors may contribute substantially to the benefits observed. (Erdogmus, 2007)

The **Neck & Upper Back** postsurgical guideline is modified pursuant to the ODG revised October 23, 2008 version as set forth below.

Neck & Upper Back

Displacement of cervical intervertebral disc (ICD9 722.0):

Postsurgical treatment (fusion, after graft maturity): 24 visits over 16 weeks

Subdivision 9792.24.3(d)(2) is added to incorporate by reference into the MTUS Appendix C—Postsurgical Treatment Guidelines Evidence-Based Reviews (EBRs) as supplemental part of the Postsurgical Treatment Guidelines. This section also informs the public that a copy of Appendix C may be obtained from the Medical Unit, Division of Workers' Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>. Appendix C is incorporated by reference into the regulations pursuant to requests by the regulated public that the references should be available to the public as part of the regulations. This document represents the evidence-based reviews that support the Postsurgical Medical Treatment Guidelines with a description of the DWC's Methodology used. Because DWC intends to continue to incorporate the most recent scientific advances in medicine to this document via formal rulemaking, this document will continue to grow; it will become cumbersome and impractical in the future to publish it in the regulations. Thus, DWC will incorporate the document by reference into the regulations, and make it available to the public as set forth above.

Subdivision 9792.24.3(d)(3) is added to incorporate by reference into the MTUS Appendix E—Postsurgical Treatment Guidelines Work Loss Data Institute-Official Disability Guidelines References. These references are incorporated into the MTUS as supplemental part of the Postsurgical Treatment Guidelines. This section also informs the public that a copy of Appendix E may be obtained from the Medical Unit, Division of Workers' Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>. Appendix E is incorporated into the regulations pursuant to requests by the regulated public that the references should be available to the public as part of the regulations. Because the references are

voluminous and it would cumbersome and impractical to publish them in the regulations, DWC will incorporate them by reference into the regulations, and make them available to the public as set forth above.

A new Appendix A1 is created to supplement the Notice of Modification to Text of PROPOSED Rulemaking.

Appendix A1—**Chronic Pain Medical Treatment Guidelines** serves as the Supplement of Notice of Modification of the Text of the Division of Workers' Compensation's (DWC) Chronic Pain Medical Treatment Guidelines as adapted from the Work Loss Data Institute's Official Disability Guidelines (ODG) Treatment in Workers' Comp – Chapter on Pain. The new version adapted is dated **October 23, 2008**. The Notice of Proposed Rulemaking issued June 2008 adapted a previous version dated October 31, 2007. The new proposed version is being adapted because many comments were submitted by the public requesting that the most recent version of ODG be adapted in order to allow the Medical Treatment Utilization Schedule (MTUS) to reflect the most recent advances in the science of medicine. **Appendix A1 is being served together with this 15-day Notice.**

Modifications to Appendix C—Postsurgical Treatment Guidelines-Evidence-Based Reviews

The header of Appendix C is modified to delete the phrases "Initial Statement of Reasons," and "(DWC 2008)." The footer of Appendix C is modified to delete the phrase "(DWC 2008)," and to substitute the month "June" with the month "November." These modifications are intended to make the document current for incorporation into the regulations. The document is being incorporated as section 9792.24.3(d)(2).

Modifications to Appendix D—Chronic Pain Medical Treatment Guidelines-Division of Workers' Compensation and Official Disability Guidelines References

The header of Appendix D is modified to delete the phrases "Initial Statement of Reasons," and "(DWC 2008)." The header of Appendix D is further modified to insert the date of the version of the ODG Chapter of Pain being adapted, thus "October 23, 2008 version of ODG Chapter on Pain." The footer of Appendix D is modified to delete the phrase "(DWC 2008)," and to substitute the month "June" with the month "November." Further because the Chronic Pain Medical Treatment Guidelines version is being updated to the October 23, 2008 ODG version, the entire document is being replaced to ensure that it contains all the revised ODG references. The modifications are intended to make the document current for incorporation into the regulations. The document is being incorporated as section 9792.24.2(e). The document is being incorporated into the regulations pursuant to requests by the regulated public that the references should be available to the public as part of the regulations. Because the references are voluminous and it would cumbersome and impractical to publish them in the regulations, DWC will incorporate them by reference into the regulations, and make them available to the public from the Medical Unit, Division of Workers' Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>.

Modifications to Appendix E—Postsurgical Treatment Guidelines—Official Disability Guidelines References

The header of Appendix E is modified to delete the phrases "Initial Statement of Reasons," and "(DWC 2008)." The header of Appendix E is further modified to insert the date of the version of the ODG Physical Medicine Guidelines being adapted, thus "October 23, 2008 ODG version of Physical Medicine Guidelines." The top of the first page of Appendix E is modified to delete the title of the Appendix, "Work Loss Data Institute Official Disability Guidelines"

References,” as superfluous language, as this information is already contained in the header of the Appendix.

The list of postsurgical areas contained on the top of the document (i.e., (Ankle & Foot (Acute & Chronic), Burns, Carpal Tunnel Syndrome (Acute & Chronic), Elbow (Acute & Chronic), Forearm, Wrist, & Hand, Head, Hip & Pelvis (Acute & Chronic), Knee & Leg (Acute & Chronic), Low Back - Lumbar & Thoracic (Acute & Chronic), Neck and Upper Back (Acute & Chronic), Pain (Chronic), Shoulder (Acute & Chronic)) is deleted as superfluous.

Names for the postsurgical areas in the Appendix E are modified to match the names of the postsurgical areas in the regulations.

Postsurgical areas for Hernia, Neck & Upper Back, and Shoulder are modified to reflect that no postsurgical physical medicine references were found.

References which do not relate to postsurgical are removed. References which are duplicated in the document are removed.

The footer of Appendix E is modified to delete the phrase “(DWC 2008),” and to substitute the month “June” with the month “November.” Further because the Postsurgical Treatment Guidelines version is being updated to the October 23, 2008 ODG version, the entire document is being replaced to ensure that it contains all the revised ODG references. The modifications are intended to make the document current for incorporation into the regulations. The document is being incorporated as section 9792.24.3(d)(3). The document is being incorporated into the regulations pursuant to requests by the regulated public that the references should be available to the public as part of the regulations. Because the references are voluminous and it would cumbersome and impractical to publish them in the regulations, DWC will incorporate them by reference into the regulations, and make them available to the public from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612-1486, or from the DWC web site at <http://www.dwc.ca.gov>.

Modifications to the FISCAL IMPACTS as originally noticed in the Notice of Proposed Rulemaking issued June 2008

The Fiscal Impacts noticed in the Notice of the Proposed Rulemaking is modified and set forth in its entirety below:

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: As an employer that is legally uninsured for workers’ compensation, and whose workers’ compensation claims are administered by the State Compensation Insurance Fund, the State may incur increased medical costs for a subset of its claims as a result of this regulation. However, the State is already providing medical treatment for these claims. These regulations provide greater specificity and clarity to the MTUS which is expected to bring about a reduction in medical and utilization review costs for some claims. As described in Section B, estimated costs of this Form 399 for each part of the regulation (adoption of the ACOEM revised elbow chapter, postsurgical physical medicine guidelines, and chronic pain guidelines), the fiscal impact, if any, is difficult if not impossible to estimate.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these

proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.

Regardless, as an employer, local governments may incur increased medical costs for a subset of its claims as a result of this regulation. However, local governments are already providing medical treatment for these claims. These regulations provide greater specificity and clarity to the MTUS which is expected to bring about a reduction in medical and utilization review costs for some claims. As described in Section B, estimated costs of this Form 399 for each part of the regulation (adoption of the ACOEM revised elbow chapter, postsurgical physical medicine guidelines, and chronic pain guidelines), the fiscal impact, if any, is difficult if not impossible to estimate.

- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)